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 David Daleiden*

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

NATIONAL ABORTION FEDERATION
 (NAF),

Plaintiff,

vs.

THE CENTER FOR MEDICAL
 PROGRESS, BIOMAX
 PROCUREMENT SERVICES, LLC,
 DAVID DALEIDEN (aka "ROBERT
 SARKIS"), and TROY NEWMAN,

Defendants.

Case No. 3:15-cv-3522 (WHO)

**[PROPOSED] DEFENDANTS' SURREPLY
 IN OPPOSITION TO MOTION FOR ORDER
 TO SHOW CAUSE**

Hon. Judge William H. Orrick, III

Hearing:
 Date: April 15, 2024
 Time: 2:30 p.m.

Defendants The Center for Medical Progress (“CMP”) and David Daleiden (“Mr. Daleiden”) (collectively, “Defendants”), by and through undersigned counsel, hereby file their surreply in opposition to Plaintiff National Abortion Federation (NAF)’s Motion for Order to Show Cause for the purpose of addressing a new argument NAF made for the first time in its Reply.

In NAF’s Reply in support of its Motion for Order to Show Cause, NAF argues that Mr. Daleiden provided the Court with misleading testimony. In his declaration in support of Defendants’ Opposition, Mr. Daleiden explained that CMP’s social media manager created the video clips at issue using the recording of a March 19, 2024, Congressional hearing that Congresswoman Marjorie Taylor Greene uploaded to her YouTube page. Daleiden Decl. ¶¶ 5– 6. NAF attempts to cast doubt on this testimony by noting that Congresswoman Greene’s version recording contained her logo, while CMP’s video clips did not. Reply at 14. NAF made this argument for the first time in its Reply. Before NAF filed its Motion, Defendants stated in a Motion for Clarification that the video clips they published were derived from the recording Congresswoman Greene published. Dkt. No. 832 at 3. NAF did not challenge the veracity of this statement in its original Motion. Dkt. No. 839 at 10–11.

NAF’s new accusation is serious. It is therefore important that the Court understands why CMP’s videos did not contain Congresswoman Greene’s logo. The explanation is simple: the logo on Congresswoman Greene’s recording is an overlay that a YouTube platform feature displays over her videos in the YouTube player. It is not a graphic embedded in the video file itself, but simply an overlay feature in the YouTube player. In fact, viewing the video at different sizes and screen resolutions in the YouTube player positions the logo overlay differently relative to the video itself, because it is part of the YouTube player, not part of the video file. Because the logo is just an overlay feature of the YouTube player, and not part of the actual video file, downloading a copy of the recording therefore does not and could not contain the YouTube player’s overlay logo. Thus, when CMP’s social media manager created clips from Congresswoman Greene’s recording, the YouTube player’s overlay logo was not present in the source material (the downloaded copy of Congresswoman Greene’s recording of the March 19, 2024, Congressional hearing). Google, the

parent company of YouTube, has published instructions on how YouTube users can use the platform's Customization and Branding features to display a custom overlay "video watermark" over videos on their channel, like Congresswoman Greene's logo.¹ These instructions note that these "Channel watermarks do not show on custom YouTube chromeless players or Adobe Flash." It is clear that Congresswoman Greene's logo on her recording² is one of these Customization and Branding YouTube player "video watermark" overlays because it functions as a clickable link to Congresswoman Greene's channel, which would not be possible for a graphic embedded in the video file. *See* ¶¶ Supp. Daleiden Decl. 4–6. NAF's belated attempt to impeach Mr. Daleiden's testimony therefore lacks all merit.

Defendants therefore request that the Court deny NAF's Motion for Order to Show Cause.

DATED: April 14, 2024

By: /s/ Mark P. Meuser

MARK P. MEUSER

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¹ Google, "Manage Your Channel Branding," <https://support.google.com/youtube/answer/10456525?hl=en&co=GENIE.Platform%3DDesktop#zipy=%2Cadd-your-video-watermark> (last accessed Apr. 14, 2024).

² Congresswoman Marjorie Taylor Greene, "Rep. Marjorie Taylor Greene Leads Hearing on Investigating the Black Market of Baby Organ Harvesting," YouTube, Mar. 19, 2024, <https://www.youtube.com/live/yXIYGBMoIsc?app=desktop&si=lmTgrf-RujDJuJ2E>.

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